

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

INTEL CORPORATION AND DELL, INC.,

Plaintiff,

v.

COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH ORGANISATION,

Defendant.

Civil Action No. 6:06-CV-551 (LED)

Jury Trial Demanded

Hon. Leonard E. Davis

COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH ORGANISATION,

Counterclaimant,

v.

INTEL CORPORATION AND DELL, INC.,

Counterdefendant.

**COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH
ORGANISATION'S FIRST AMENDED ANSWER AND COUNTERCLAIMS
TO COMPLAINT FOR DECLARATORY JUDGMENT**

INTRODUCTION

Defendant and Counterclaimant Commonwealth Scientific and Industrial Research Organisation ("CSIRO") hereby files its First Amended Answer and Counterclaims to Plaintiffs and Counterclaim Defendants Intel Corp. ("Intel") and Dell Corp.'s ("Dell") (collectively "Plaintiffs") Complaint for Declaratory Judgment, as follows:

I. ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

THE PARTIES

1. On information and belief, CSIRO admits that Plaintiff Intel is a Delaware corporation having its principal place of business at 2200 Mission College Boulevard, Santa Clara, California

95052. CSIRO has insufficient information to admit or deny the remaining allegations of Paragraph 1 and on that basis denies them.

2. On information and belief, CSIRO admits that Plaintiff Dell is a Delaware corporation having its principal place of business at One Dell Way, Round Rock, Texas 78682. CSIRO has insufficient information to admit or deny the remaining allegations of Paragraph 2 and on that basis denies them.

3. CSIRO admits that it has its principal place of business at Limestone Avenue, Campbell ACT 2612, Australia.

JURISDICTION AND VENUE

4. CSIRO admits that Plaintiffs Intel and Dell allege that this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. CSIRO has contested subject matter jurisdiction.

5. CSIRO admits that venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and that CSIRO is subject to personal jurisdiction within this district. Except as expressly admitted herein, CSIRO denies the remaining allegations of Paragraph 5.

INTRADISTRICT ASSIGNMENT

6. CSIRO denies the allegations contained in Paragraph 6 of Plaintiffs' Complaint.

FACTUAL BACKGROUND

7. CSIRO admits the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. CSIRO admits that it asserts that it owns and holds all right, title and interest in United States Patent No. 5,487,069 ("the '069 Patent"). CSIRO admits that it asserts that the '069 Patent covers implementations of at least the Institute of Electrical and Electronics Engineers ("IEEE") 802.11a and 802.11g standards for wireless local area networks. CSIRO admits that it asserts that Dell manufactures, uses, and/or sells products that implement or enable the implementation of such

standards. In its Counterclaims, CSIRO alleges that Dell infringes the '069 Patent. Except as expressly admitted herein, CSIRO denies the remaining allegations of Paragraph 8.

9. CSIRO denies the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

10. CSIRO admits that it first contacted Dell on or about January 23, 2004. CSIRO admits that Mr. Richard Hsu of the Palo Alto, California office of Townsend and Townsend and Crew LLP ("Townsend") sent a letter to Dell that identified the '069 Patent and included the quoted sections identified in Paragraph 10 of Plaintiffs' Complaint. CSIRO admits that its representatives met with Dell in 2004. CSIRO admits that on or about September 28, 2004, Mr. Robert Colwell of Townsend sent to Dell a formal offer to license the '069 Patent, which expired on or about May 1, 2005. Except as expressly admitted herein, CSIRO denies the remaining allegations of Paragraph 10.

11. CSIRO denies that it has threatened or accused one or more Intel customers of infringement. CSIRO is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and on that basis denies them.

12. CSIRO admits that on February 2, 2005 it commenced an action for patent infringement against Buffalo Technology (USA), and Buffalo, Inc. in the United States District Court for the Eastern District of Texas, alleging infringement of the '069 Patent. Except as expressly admitted herein, CSIRO denies the remaining allegations of Paragraph 12.

13. CSIRO denies that, when Intel filed the instant suit, Intel was under a reasonable apprehension that it would face suit for infringement by CSIRO, or otherwise be obligated to defend or indemnify one or more Intel customers against CSIRO's '069 Patent infringement claims.

14. CSIRO denies that, when Dell filed the instant suit, Dell was under a reasonable apprehension of suit for infringement by CSIRO. CSIRO denies that it made direct threats to Dell.

15. CSIRO denies that an actual controversy existed between Intel/Dell and CSIRO when Intel and Dell filed the instant suit. CSIRO denies that Intel and Dell are entitled to relief as

requested.

COUNT I

**DECLARATORY JUDGMENT OF
NONINFRINGEMENT OF THE '069 PATENT BY INTEL**

16. CSIRO incorporates herein by reference its responses to Paragraphs 1 through 15.
17. CSIRO denies the allegations contained in Paragraph 17 of Plaintiffs' Complaint.

COUNT II

**DECLARATORY JUDGMENT OF
NONINFRINGEMENT OF THE '069 PATENT BY DELL**

18. CSIRO incorporates herein by reference its responses to Paragraphs 1 through 15.
19. CSIRO denies the allegations contained in Paragraph 19 of Plaintiffs' Complaint.

COUNT III

**DECLARATORY JUDGMENT OF
INVALIDITY OF THE '069 PATENT BY INTEL AND DELL**

20. CSIRO incorporates herein by reference its responses to Paragraphs 1 through 15.
21. CSIRO denies the allegations contained in Paragraph 21 of Plaintiffs' Complaint.

CSIRO'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

22. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

PRAYER FOR RELIEF

23. WHEREFORE, CSIRO requests entry of judgment in its favor and against Plaintiffs as follows:

- a. That Plaintiffs take nothing by reason of their complaint, that judgment be rendered in favor of Defendant;
- b. That Defendant CSIRO be awarded its costs of suit incurred in defense of this action; and
- c. For such other relief as the Court deems proper.

II. CSIRO'S COUNTERCLAIMS

Counterclaimant CSIRO for its Counterclaims against Counterclaim Defendants Intel and Dell alleges as follows:

PARTIES

24. CSIRO is one of the largest and most diverse scientific research institutions in the world, and has a principal place of business at Limestone Avenue, Campbell ACT 2612, Australia.

25. CSIRO is informed and believes, and on that basis alleges, that Counterclaim Defendant Intel is a Delaware corporation having its principal place of business at 2200 Mission College Boulevard, Santa Clara, California 95052.

26. CSIRO is informed and believes, and on that basis alleges, that Counterclaim Defendant Dell is a Delaware corporation having its principal place of business at One Dell Way, Round Rock, Texas 78682.

JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) in that Intel has its principal place of business in this district and both Intel and Dell have done business in this District, have committed acts of infringement in this district, and continue to commit acts of infringement in this District, entitling CSIRO to relief.

FIRST COUNTERCLAIM: INFRINGEMENT OF U.S. PATENT NO. 5,487,069

28. On January 23, 1996, the '069 Patent was duly and legally issued for inventions entitled "Wireless LAN." CSIRO holds all rights and interest in the '069 patent.

29. Upon information and belief, Intel has directly infringed and continues to infringe the '069 patent and/or induced or contributed to the infringement of the '069 patent by others. Intel's infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of the Intel® PRO/Wireless 2915ABG, Intel® PRO/Wireless 2200BG, Intel® PRO/Wireless 5000 LAN CardBus Adapter, Intel® PRO/Wireless 5000 LAN Access Point, Intel® PRO/Wireless 5000 LAN Dual Access Point, Intel® PRO/Wireless 5000 LAN PCI Adapter, Intel® PRO/Wireless 3945ABG Network Connection, and other Intel Centrino products practicing the IEEE 802.11a, 802.11g and/or draft 802.11n standards, and other products practicing or enabling and inducing others to practice the IEEE 802.11a, 802.11g and/or draft 802.11n standards.

30. Upon information and belief, Dell has infringed and continues to infringe the '069 patent and/or induced or contributed to the infringement of the '069 patent by others. Dell's infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of the Intel® PRO/Wireless 2915 Internal Wireless (802.11 a/b/g, 54Mbps), Intel® PRO/Wireless 2200 Internal Wireless (802.11 b/g, 54Mbps), Wireless1450 802.11 a/b/g WLAN Mini PC Card, Wireless 1350 WLAN PC Card, Wireless 1450 Dual-band USB 2.0 Adapter, TrueMobile 2300 Router, TrueMobile 2350 Router, TrueMobile 1300 802.11 b/g MPCI, Wireless Printer Adapter 3300, Dell Wireless 3945 Mini PCI Express Card, 3310 USB Wireless Printer Adapter, Wireless 1470 802.11 a/b/g WLAN Mini PCI Card, Wireless 1490 802.11 a/g mini-Card, Wireless 1390 802.11 g mini-Card, and other products that contain Intel's Centrino products practicing the IEEE 802.11a, 802.11g and/or draft 802.11n standards, and other products practicing or enabling and inducing others to practice the IEEE 802.11a, 802.11g and/or draft 802.11n standards.

31. Intel and Dell are each liable for infringement of the '069 patent pursuant to 35 U.S.C. § 271.

32. Intel and Dell's acts of infringement have caused damage to CSIRO and CSIRO is entitled to recover from Intel and Dell the damages sustained by CSIRO as a result of Intel and Dell's wrongful acts in an amount subject to proof at trial. Intel and Dell's infringement of CSIRO's exclusive rights under the '069 patent will continue to damage CSIRO, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

33. Upon information and belief, Intel and Dell's infringement of the '069 patent is willful and deliberate, entitling CSIRO to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

34. WHEREFORE, CSIRO requests entry of judgment in its favor and against Intel and Dell as follows:

- a. Judgment that Intel and Dell have infringed and are infringing the '069 Patent;
- b. Permanently enjoining Intel and Dell and each of their officers, agents, employees, and those acting in privity with them, from further direct and/or indirect infringement of the '069 Patent;
- c. Awarding damages to CSIRO arising out of Intel's and Dell's infringement of '069 Patent, including enhanced damages pursuant to 35 U.S.C. § 284, together with prejudgment and post-judgment interest, in an amount according to proof;
- d. Awarding CSIRO its attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

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e. Granting CSIRO its costs and further relief as the Court may deem just and proper.

DATED: June 15, 2007

Respectfully submitted,

By: /s/ Daniel J. Furniss

Daniel J. Furniss
CA State Bar No. 73531
djf@townsend.com
Gary H. Ritchey
CA State Bar No. 136209
ghritche@townsend.com

TOWNSEND AND TOWNSEND AND CREW LLP
379 Lytton Avenue
Palo Alto, CA 94301
Telephone: (650) 326-2400
Facsimile: (650) 326-2422

S. Calvin Capshaw
State Bar No. 03783900
BROWN & McCARROLL LLP
1127 Judson Road, #220
Longview, Texas 75601-5157
Telephone: (903) 236-9800
Fax: (903) 236-8787
ccapshaw@mailbmc.com

Attorneys for Defendant and Counterclaimant
COMMONWEALTH SCIENTIFIC AND INDUSTRIAL
RESEARCH ORGANISATION

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. Rule 38(b), Defendant and Counterclaim Plaintiff CSIRO hereby demands a trial by jury on all issues triable of right by a jury that are raised for determination by this Complaint or that may be raised by any counterclaim to be filed herein.

DATED: June 15, 2007

TOWNSEND AND TOWNSEND AND CREW LLP

By: /s/ Daniel J. Furniss
Daniel J. Furniss

Attorneys for Defendant and Counterclaimant
COMMONWEALTH SCIENTIFIC AND INDUSTRIAL
RESEARCH ORGANISATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on June 15, 2007. Any other counsel of record will be served by facsimile transmission and first class mail.

/s/ Daniel J. Furniss
Daniel J. Furniss

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